



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/158896

PRELIMINARY RECITALS

Pursuant to a petition filed July 09, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 13, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely, and if timely whether the agency properly calculated Petitioner's April, May, June, and July FoodShare (FS) benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine Mays
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's FS benefits were reduced in March 2014 because his wife and two children moved out of his home. These changes were reported to the agency.

3. In April 2014 Petitioner's daughter moved back into the home. Petitioner did not report this change to the agency.
4. Petitioner's daughter was with her mother from July 9, 2014 through August 5, 2014.
5. Petitioner's daughter was included in her mother's household in April, May, June, and July of 2014. Petitioner's daughter has been added to his case and is now included in his household. She is no longer included in her mother's household.
6. The Division of Hearings and Appeals received Petitioner's request for fair hearing via telephone on July 9, 2014.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS, like the reduction of FS benefits effective March 2014, must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g).

In this case Petitioner agrees that his wife and two children moved out of his home in February 2014. That change was reported, and the agency properly reduced Petitioner's FS benefits effective March 1, 2014, the first month after this change was reported. Petitioner's issue is that his wife was charged with felony interference of child custody in a criminal case in March 2014. She was ordered to have no contact with his child, and his child moved back into his household in March 2014. He never reported that change to the agency until July 2014. The child was added to his FS household effective August 1, 2014 the first month after the change was reported. Petitioner is upset because his child was living with him in March, April, May, June, and July. During this time the child was included in his wife's FS household, and thus his wife, soon to be ex-wife, received FS benefits for this child who Petitioner was caring for.

When Petitioner's FS benefits were reduced effective March 1, 2014 two notices were mailed to Petitioner. The first notice was mailed on February 17, 2014. The second notice was mailed on February 18, 2014. Both notices specifically stated, "[this child] cannot get [FS] benefit[s] as part of this case because [this child is] already getting [FS] benefit[s] as part of another case." Both notices also stated, "based on the benefits you are getting, you must report within 10 days if someone: has a change in where he or she is staying." Petitioner did not file an appeal with the Division of Hearings and Appeals until July 9, 2014. This far exceeds the 90 day limit from March 1, 2014. Therefore Petitioner's appeal is untimely and the Division of Hearings and Appeals does not have jurisdiction.

I would note that Petitioner does not contest the reduction in his FS benefits effective March 1, 2014. Petitioner's main complaint is that his child was not added to his FS household for April, May, June, and July 2014, however, Petitioner admits that he first informed the agency that his child was living with him in July 2014. As soon as Petitioner reported this change, the agency added the child to Petitioner's FS household effective the following month. The Division of Hearings and Appeals only has jurisdiction over negative actions by the agency. Therefore, even if his appeal were timely filed, the Division of Hearings and Appeals would not have jurisdiction over this issue because there was no negative action by the agency. The agency made the proper changes as soon as Petitioner reported those changes.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals does not have jurisdiction to decide whether the agency properly calculated Petitioner's April, May, June, and July FS benefits.

THEREFORE, it is

ORDERED

That the Petition dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of August, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 14, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability